FISCAL NOTE

Bill #:	SB0465	**Title:**	Create MT Capital Formation Act
Primary Sponsor:	Tester, J	**Status:**	As Amended in Senate Committee

Sponsor signature Date Chuck Swysgood, Budget Director Date

Fiscal Summary

	FY 2004 Difference	FY 2005 Difference
Expenditures:		
General Fund	$185,060	$98,648
State Special Revenue	$0	$50,748
Revenue:		
State Special Revenue	$0	$50,000
Net Impact on General Fund Balance:	($185,060)	($98,648)

- ☐ Significant Local Gov. Impact
- ☐ Included in the Executive Budget
- ☐ Dedicated Revenue Form Attached
- ☒ Technical Concerns
- ☒ Significant Long-Term Impacts
- ☒ Needs to be included in HB 2

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce

1. SB 465 establishes the Montana Capital Formation Act, providing economic stimulus to the Montana economy and businesses by creating a Montana Capital Investment Board (board); requires the selection and designation of a Montana Capital Investment Administrator to administer a Montana Fund of Funds; authorizes the issuance of tax credits to investors in the Montana Fund of Funds; requiring the board to impose a fee for its reasonable costs of operation; and authorizing the board to borrow from the Board of Investments.
2. Section 4 of SB 465 creates the board, which consists of five voting members and is attached to the Department of Commerce for administrative purposes as provided in 2-15-121, MCA. Board members must be compensated for expenses and mileage, but they may not receive a director's fee, per diem, or salary for service. For the purposes of this fiscal note, it is assumed the board will meet six times a year at an average cost per meeting of $600, or $3,600 each fiscal year.
3. SB 465 establishes the criteria by which the Montana Capital Investment Administrator (administrator) is chosen. SB 465 mandates that the administrator be a private, nonprofit corporation established pursuant to Title 35, Chapter 2, MCA. To facilitate the selection and designation of the administrator, SB 465 establishes a three-member selection committee, which terminates upon final selection of the

Administrator. The Department of Commerce would assist the selection committee in any manner deemed necessary by the selection committee. For the purposes of this fiscal note it is assumed the selection committee would meet six times at an average cost per meeting of $360, or $2,160 in FY 2004 only.

4. The board will charge a placement fee for issuance of a certificate and a related tax credit to a designated investor. The fee may not exceed 0.5 percent of the investment of the designated investor. The department assumes that it will take all of FY 2004 to appoint the board, appoint a selection committee, hire the Montana capital investment administrator, set up the Montana Funds of Funds, and select the venture capital investment fund allocation manager. Therefore, it is assumed that there will be no revenue from the placement fee in FY 20004.
5. The department assumes that designated investors will invest $10 million in the Montana Fund of Funds in FY 2005. This investment level will generate $50,000 ($10 million x 0.5%) in FY 2005 to pay operating expenses of the board.
6. The board may engage consultants to complete its work. During FY 2004 and FY 2005, it is assumed that the board will engage financial experts and attorneys in an amount estimated to be $50,000 in FY 2004 and $20,000 in FY 2005.
7. One professional staff person and one administrative assistant would be required to administer the affairs of the board, manage the contracts that will be let by the board, assist the "selection committee" in all of its duties, manage the contracts and redemptions for tax credit certificates, and interact on behalf of the board with the Montana capital investment administrator. Personal services costs are estimated to be $94,300 in FY 2004 and FY 2005. Total operating costs are estimated to be $90,760 in FY 2004 and $53,600 in FY 2005. Operating expenses include board and selection committee member travel expenses and the contractual expenses for legal and financial assistance mentioned previously, along with miscellaneous operating expenses which include preparation, printing, and distribution of an annual report, and costs paid to the Legislative Auditor for an annual audit.

Department of Revenue

8. This bill embodies the "Montana Capital Formation Act".
9. Under this bill, the Montana Fund of Funds administered by the Montana capital investment administrator is created to make investments of private seed capital and venture capital to partnerships and other firms. Designated investors who purchase equity interests in the fund will contract with the Montana Capital Investment Board created by the bill and receive "certificates" entitling them to tax credits, which may be used to reduce individual income, corporation license, or insurance premiums tax liabilities. The board will be required to indicate on the certificate the amount of the tax credit and the tax year or years for which the credit may be claimed.
10. The amount of tax credit available to any single investor is limited to the difference between the "scheduled aggregate return" specified on the certificate and the aggregate actual return received by the investor on the capital investment (see Technical Note # 6).
11. The board will be authorized to issue certificates and related tax credits in an aggregate amount not to exceed $50 million; and may issue no more than $10 million in certificates and related tax credits in any single fiscal year.
12. The certificates issued by the board must have a specific calendar year maturity date designated by the board of not less than five years after the date of issuance. A tax credit must be claimed for a tax year that begins during the calendar year maturity date stated in the certificate.
13. This act will be effective July 1, 2003. The first certificates will not be issued until tax year tax year 2005, and the first tax credits will not be used to offset tax liabilities until tax year 2010. Hence, there is no impact on the general fund from this proposal for the next three biennia.
14. There are no administrative impacts on the Department of Revenue from this bill.

Legislative Branch

15. The annual audit of the board required by Section 4 will be amended to require the audit of the board be included in the biennial audit of the Department of Commerce at an estimated biennial cost of $748.
16. Line item audit appropriation in HB 2 will be increased by $748.

FISCAL IMPACT:

	FY 2004 Difference	FY 2005 Difference
Department of Commerce (51)		
FTE	2.00	2.00
Expenditures:		
Personal Services	$94,300	$94,300
Operating Expenses	90,760	54,348
TOTAL	$185,060	$148,648
Funding of Expenditures:		
General Fund (01)	$185,060	$98,648
State Special Revenue (02)	0	50,000
TOTAL	$185,060	$148,648
Revenues:		
State Special Revenue (02)	$0	$50,000
Legislative Branch		
Expenditures:		
Personal Services	$0	$748
Funding of Expenditures:		
State Special Revenue (02)	$0	$748
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):		
General Fund	($185,060)	($98,648)
Special Revenue (02)	$0	$0

LONG-RANGE IMPACTS:

Department of Revenue

Beginning in tax year 2010, taxpayers will start to take credits against individual income taxes, corporation license taxes, and insurance premiums taxes under the provisions of this bill. General fund revenues will be reduced accordingly.

TECHNICAL NOTES:

Department of Commerce

1. Even though SB 465 allows the Montana Capital Investment Board to borrow operating funds from the Montana Board of Investments, the fees allowed under SB 465 would not support the operating costs of the board in FY 2004 or FY 2005. In order to equal the anticipated average operating expenses of the board

(FY 2005 estimate), approximately $28.8 million would need to be invested in the Montana Fund of Funds each year. Therefore, it is assumed that the activities of the board will need to be partially supported with general fund.

2. Section 12 (3) states that designated investors must redeem their certificates on June 30 of the calendar year maturity date stated on the certificate. This may be a technical error where the language was intended to say before June 30.
3. SB 465 limits the total tax credit liability to $50 million. Once all of the projected tax credits are obligated under a due diligence calculation, there will not be a continuing mechanism to fund the activities of the board since no additional investments can be made in the Montana Fund of Funds.
4. The Department of Commerce recommends that the Montana Capital Investment Board may be attached to the Montana Department of Revenue for administrative purposes. Throughout the bill, the board is instructed to work with the Department of Revenue by setting criteria and procedures for the allocation and issuance of tax credits to designated investors, by issuing verification of tax credits to the Department of Revenue, and by consulting with the Department of Revenue on the adoption of rules. (See Sections 7(1), 7(4), 10(5), 12(2), 13 of the bill). Section 4 (2) could be amended to attach the Montana Capital Investment Board to the Montana Department of Revenue. Given the nature of this legislation, MDOR may be the most appropriate agency to administratively support the board.
5. Section (4) of the bill implies that the board members are appointed for life, unless they resign or die in office. A term for board members may be needed for this act.

Department of Revenue

6. Section 10 provides that the amount of tax credit available to any single investor is limited to the difference between the "scheduled aggregate return" specified on the certificate and the aggregate actual return received by the investor on the capital investment. Does this assume that the scheduled aggregate return will always be greater than the aggregate actual return? If so, what happens if the actual aggregate return is greater than the scheduled aggregate return?
7. Section 11 provides that an individual may claim the credit of a C corporation electing to have income taxed directly to the individual. While this is understandable for S corporation, partnerships, etc. it is not clear how this could apply to a C corporation.

Legislative Branch

8. In order to minimize legislative audit costs, the bill could be amended to remove the annual audit requirement and insert a requirement that the board be included in the biennial audit of the Department of Commerce.